

EXHIBIT C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VANESSA LEE, K.L. SHANNON, AARON
WOOD, JAMES GOETTLER, BOB BARNES,
and the N30 COALITION,

Plaintiffs,

v.

PAUL SCHELL, as Mayor of the City of Seattle,
GIL KERLIKOWSE, as Chief of the Seattle
Police Department, and the CITY OF SEATTLE,

Defendants.

No. C01-1928P

ORDER GRANTING
PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION

This matter comes before the Court on Plaintiffs' Motion for a Preliminary Injunction. (Dkt. No. 2). Plaintiffs seek a permit to demonstrate on November 30, 2001 in Westlake Park, Seattle. The City of Seattle Committee on Special Events denied Plaintiffs' permit application, citing competing and incompatible use by a holiday carousel. Because Plaintiffs have demonstrated possible irreparable injury, a probability of success on the merits, and that the balance of hardship is strongly in their favor, the Court GRANTS Plaintiffs' motion and ORDERS the City of Seattle to issue a permit to the Plaintiffs for the use of the south end of Westlake Park on November 30, 2001.

BACKGROUND

Plaintiffs are organizers of a political demonstration which is planned for Westlake Park in the early afternoon of Friday, November 30, 2001. Plaintiffs seek to commemorate the anniversary of protests against the World Trade Organization ("WTO") ministerial summit in Seattle, as well as continue to demonstrate against global capitalism. The N30 Coalition is an unincorporated

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1 association comprised of persons organizing events on November 30, 2001 commemorating
2 opposition to the 1999 WTO ministerial.

3 On July 17, 2001, Plaintiff James Goettler contacted the Parks Department and requested a
4 permit on behalf of the N30 Coalition for a permit to use Westlake Park the afternoon of November
5 30, 2001. Mr. Goettler testified that an employee of the Seattle Parks Department informed him that
6 he would not be given an application for a permit because the Downtown Seattle Association
7 ("DSA") already had a permit for Westlake Park to operate a holiday carousel for that day. The
8 carousel, apparently in its eighteenth year, currently has a permit for Westlake Park from mid-
9 November until early January. However, when the Plaintiffs obtained a copy of DSA's permit, the
10 application was dated July 24, 2001, a week after Mr. Goettler had contacted the Parks Department.
11 (Sheehan Decl. Ex. 1 at 3). Defendants offered no explanation, either at oral argument or in
12 submitted briefs, as to either why Mr. Goettler was refused an application or why he was told that a
13 permit had already been approved.

14 In early October of 2001, Mr. Goettler obtained and submitted an application for the use of
15 Westlake Park. In the application, he estimated attendance at the event to be approximately 50
16 participants and 1,000 spectators. (Swanson Decl. Ex. 1B at 1). Special Events Co-Ordinator
17 Virginia M. Swanson responded to the application by indicating that the south end of the park could
18 be used if 200 persons or less were at the event. (*Id.* Ex. 1C at 1). Otherwise, Ms. Swanson
19 recommended scheduling the event at another downtown location. (*Id.*). The Parks Department has
20 approved a permit for a "Walk for Capitalism" on December 2, 2001, with an estimated attendance
21 of 20-60 participants and an unknown number of spectators. (Pl's Ex. 1 at 1). Mr. Goettler replied
22 to Ms. Swanson that the space at the south end of the park was unacceptable, and he requested use of
23 the north end of the park, which includes a built-in stage. (Swanson Decl. Ex. 1C at 2). Ms.
24 Swanson answered that if using the north end of the park required closing Pine Street, Mr. Goettler
25 would have to fill out a Special Event Application. (*Id.* at 3). The application that Mr. Goettler then
26 submitted was rejected by the Special Events Committee on November 14, 2001 on the grounds that

1 the carousel had historical priority and the rally could not be accommodated in Westlake Park due to
2 the estimated number of people who would attend. (*Id.* Ex. 11 at 1). The Parks Department has a
3 policy of giving scheduling priority to events that have historically been held in certain places at
4 certain times, such as Fourth of July Fireworks at Gas Works and Myrtle Edwards Park. (*Id.* at 2-3).
5 Plaintiffs then sought review of the denial under a new administrative review procedure, which was
6 not yet legally in effect. (*Id.* Ex. 11 at 2-3). On November 27, the review committee affirmed the
7 decision denying the Special Events permit. (*Id.* Ex. 2 at 1). Plaintiffs then brought this suit in State
8 Court, and Defendants removed to this Court. Plaintiffs filed a motion for a preliminary injunction
9 on November 29, 2001, the day before the scheduled demonstration. The Court heard oral argument
10 on the same day the motion was filed, having only a few hours to consider the briefs filed by both
11 parties before issuing a ruling.

12 Plaintiffs assert a number of reasons why protesting at the Westlake Park location in
13 particular is important to convey their message. Plaintiffs aim to make a statement about global
14 capitalism, and wish to target the businesses and shoppers surrounding Westlake Park. They note
15 that other proposed sites do not offer them such access, to the extent that they are not located in the
16 central shopping district. Plaintiffs seek to challenge what they allege is the devotion of public space
17 and resources to corporate interests, which they claim Westlake has come to represent. Plaintiffs
18 also seek to commemorate events that took place at the Westlake in 1999 and 2000 on or about
19 November 30. Plaintiffs further indicate their belief that Westlake Park serves as the central civic
20 gathering place in the city, what they label a "town square." (Mem. Supp. Prelim. Inj. at 10).
21 Plaintiffs offered testimony that they had successfully worked with the City in the past to organize
22 and manage demonstrations. At oral argument, they offered a number mechanisms to ensure an
23 organized demonstration in Westlake Park, including peer monitors, perimeter control, and police
24 liaisons.

ANALYSIS

The party moving for a preliminary injunction may meet its burden by demonstrating either (1) a combination of probable success on the merits and the possibility of irreparable injury or (2) that serious questions are raised and the balance of hardships tips sharply in its favor. See, e.g., Los Angeles Memorial Coliseum Com. v. National Football League, 634 F.2d 1197, 1201 (9th Cir. 1980). These are not separate tests, but the outer reaches of a single continuum. Id.

Balance of hardships

Plaintiffs raise serious First Amendment questions, and the balance of hardships clearly tips in the Plaintiffs' favor. First, there are questions regarding whether the City violated its own permit procedure in failing to provide the Plaintiffs with an application on request. This fact, along with other evidence presented, raises the issue of whether the permit procedure grants an unacceptable level of discretion to city officials. See Shuttlesworth v. Birmingham, 394 U.S. 147, 151 (1969). Additionally, Plaintiffs raise serious First Amendment issues regarding the critical importance of their choice for the location of the protest. See City of Ladue v. Gilleo, 512 U.S. 43, 57 (1994). At oral argument, Plaintiffs indicated their preference for a permit for the south end of Westlake Park over any other location, even if they are limited in the number of persons that can be accommodated. While closing off Pine Street would impose costs and potential hardship on the City, the same cannot be said for allowing protest in the part of Westlake Park not occupied by the carousel. Allowing the assembly in the south part of Westlake Park places little hardship on the City, but resolves many of the serious questions raised by Plaintiffs.

Probable success on the merits

In places by tradition open to assembly and debate, such as Westlake Park, the rights of the state to limit expressive activity are sharply circumscribed. Perry Education Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 45 (1983). However, even in a public forum the government may impose reasonable restriction on the time, place, or manner of protected speech, provided the restrictions are justified without reference to the content of the regulated speech, that they are

1 narrowly tailored to serve a significant governmental interest, and that they leave open ample
2 alternative channels for communication of the information. Clark v. Community for Creative Non-
3 Violence, 468 U.S. 288, 293 (1984). Nonetheless, in considering alternative channels, the Court
4 considers whether the alternative forum allows the speaker to reach his or her intended audience.
5 See Gileo, 512 U.S. at 57 (1994). First Amendment activity may not be banned simply because
6 prior similar activity led to or involved instances of violence. Collins v. Jordan, 110 F.3d 1363,
7 1372 (9th Cir. 1996). Rather than suppressing legitimate First Amendment conduct as a prophylactic
8 measure, the government has a responsibility to ensure an adequate police presence in order to
9 respond to those who actually engage in violence. Id. The record is clear that the Plaintiffs have
10 organized a non-violent demonstration, communicating to the Court their commitment to work with
11 the City to self-monitor and provide peer-based security.

12 Plaintiffs have fundamental and constitutionally protected right to engage in political speech.
13 This right must and will be protected by the Court. However, the Court is cognizant that even
14 political speech may be regulated subject to appropriate time, place, and manner restrictions.
15 Plaintiffs have articulated that Westlake Park is their forum of choice for a number of reasons.
16 Recognizing this, but aware of the public safety and competing use issues raised by the City, the
17 Court provided Plaintiffs with a choice at oral argument. Plaintiffs were allowed to choose either to
18 engage in their political speech in Westlake Park, subject to the reasonable time, place, and manner
19 restrictions imposed by the City, or at an alternative forum. Plaintiffs have unequivocally chosen
20 Westlake Park, but in doing so have accepted the restrictions regarding Park access.

21 Irreparable injury

22 Plaintiffs show the possibility of irreparable injury. They have been denied a permit to
23 protest in Westlake Park. While without a permit they may be allowed to congregate in the park,
24 they will be unable to hold their event in a meaningful sense. Without the requested relief, they will
25 not be able to set up a sound system, stage or platform, or otherwise organize the event that they have
26 planned. Plaintiffs faced possible arrest for congregating in Westlake without a permit. (Broberg

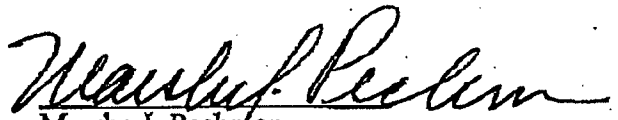
1 Deol. at 3). The Plaintiffs have made a strong showing that staging their event in another location
2 would frustrate their message. The loss of these First Amendment freedoms constitutes irreparable
3 injury. See Foti v. City of Menlo Park, 146 F.3d 629, 643 (9th Cir. 1998).

4 CONCLUSION

5 The Court hereby ORDERS the City of Seattle to issue a permit to the Plaintiffs for the use of
6 the south end of Westlake Park, from 2 - 3:30 p.m., including a reasonable time to set up and clean
7 up. If and when the city determines that more than 200 persons are present at the protest, and that
8 the crowd cannot be safely contained, the crowd may be dispersed. The grant of a permit is
9 conditioned upon Plaintiffs agreement to provide mechanisms to maintain an organized
10 demonstration, including peer monitors and a police liaison, as well as assist in any lawful order to
11 disperse.

12 The Clerk is directed to send copies of this order to all counsel of record.

13 Dated this 30 day of November, 2001.

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15 Marsha J. Pechman
16 United States District Judge
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